

United States District Court

for the
Western District of New York



United States of America

v.

Case No. 24-mj- **5147**

DUSTIN MCCARTHY,
SR.

Defendant

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

COUNT 1 (Trafficking in Firearms)

On or about July 23, 2024, in the Western District of New York, the defendant, DUSTIN MCCARTHY SR., did ship, transport, transfer, cause to be transported, or otherwise dispose of a firearm, to wit: one (1) Taurus Model G2S 9mm pistol bearing Serial Number: ADC157889, to an individual known to the U.S. Attorney, in or otherwise affecting interstate commerce, knowing or having reasonable cause to believe that the use, carrying, or possession of the firearms by the individual would constitute a felony.

All in violation of Title 18, United States Code, Section 933(a)(1).

JONATHAN ANDRES Digitally signed by JONATHAN
(Affiliate) ANDRES (Affiliate)
Date: 2024.08.13 15:57:26 -04'00'

This Criminal Complaint is based on these facts: X Continued on the attached sheet.

JONATHAN ANDRES
TASK FORCE OFFICER
Bureau of Alcohol, Tobacco, Firearms, Explosives
Printed name and title

Sworn to before me and signed telephonically.

Date: August 14, 2024

City and State: Buffalo, New York

Judge's signature

HONORABLE MICHAEL J. ROEMER
UNITED STATES MAGISTRATE JUDGE

Printed name and title

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF ERIE)
CITY OF BUFFALO) SS:

I, **JONATHAN ANDRES**, being duly sworn, deposes and states:

1. I am a Task Force Officer with the Bureau of Alcohol, Tobacco, Firearms and Explosives (hereinafter referred to as “ATF”), and as such I am an “investigative or law enforcement officer” of the United States within the meaning of Section 2510(7) of Title 18, United States Code, that is, an officer of the United States who is empowered by law to conduct investigations of, and to make arrests for, offenses enumerated in Title 18, United States Code, Section 2516(1), *et seq.* and Title 21, United States Code, Section 801. I further state that I am the kind of Special Agent as delineated in Title 18, United States Code, Section 3051.

2. I have been an ATF Task Force Officer since 2022. I am assigned to the Buffalo Field Office, New York Field Division. I am a Niagara County Sheriff’s Office Investigator (17 years), assigned to the Drug Task Force for 11 years. My primary duties as an ATF Task Force Officer include investigating violations of federal firearms laws including illegal firearm trafficking, unlawful possession of firearms, and the possession of firearms during the commission of drug trafficking crimes and crimes of violence.

3. During my time as an ATF TFO and my time as an Investigator with the Niagara County Drug Task Force, I have participated in investigations and the execution of search warrants and arrest warrants where illegally purchased/trafficked firearms, narcotics,

electronic scales, packaging materials, cutting agents, books/ledgers indicating sales, receipts, computers, cellular telephones, and other items used to facilitate firearms and narcotics trafficking were seized. I have personally conducted and/or assisted in investigations of criminal acts involving violations relating to armed individuals that were involved in the distribution of controlled substances, including heroin, cocaine, cocaine base and other substances, in violation of federal drug laws, including Title 21, United States Code, Sections 841 and 846, and Title 18, United States Code, Sections 922, 924, and 933. Additionally, I have also participated in interviews and debriefings of individuals involved in firearms and narcotics trafficking. I am familiar with the habits, methods, routines, practices and procedures commonly employed by persons engaged in the illegal trafficking of firearms and illegal drugs.

4. This affidavit is being submitted for a limited purpose, that is, a probable cause determination, therefore I have not presented all of the facts of this investigation to date. I have set forth only the information I believe to be necessary to establish probable cause. The facts in this affidavit come from my personal observations, my training and experience, and information obtained from law enforcement officers and witnesses. This affidavit is intended to show merely that there is sufficient probable cause for the requested warrant and does not set forth all of my knowledge about this matter.

5. This affidavit is made in support of a criminal complaint charging **DUSTIN MCCARTHY SR.** with violations of Title 18, United States Code, Section 933(a)(1) (firearms trafficking).

PROBABLE CAUSE

6. On July 23, 2024, members of the ATF Buffalo Field Office and Niagara County Sheriff's Office did complete a controlled purchase of a firearm from one DUSTIN MCCARTHY at the location of 1802 Linwood Avenue, Niagara Falls, NY.

7. On June 23, 2024 an ATF Confidential Informant ("CI#1")¹ did meet with ATF SA Paul Brostko as well as Investigator Kevin Morse of the Niagara County Drug Task Force in regards to purchasing a firearm from DUSTIN MCCARTHY. Upon the meet, CI#1 and their vehicle were searched with no money or contraband having been located. CI#1 was then directed to call DUSTIN MCCARTHY in order to arrange the purchase. DUSTIN then stated that he did in fact have the firearm for purchase and would be meeting CI#1 at 1802 Linwood Avenue in the City of Niagara Falls.

8. At this point, CI#1 was issued ATF Funds and a recording device and did drive to 1802 Linwood Avenue in the City of Niagara Falls where law enforcement observed them parked outside of the residence's fenced area. Law enforcement then observed DUSTIN MCCARTHY SR. meeting with CI#1 for a short period before walking back to the address at 1802 Linwood Avenue as the CI exited the area. CI#1 then advised that DUSTIN MCCARTHY SR. was going to sell them the firearm and that they had told DUSTIN MCCARTHY SR. that they were simply going to the ATM to retrieve the money for the sale.

9. Law enforcement then observed DUSTIN MCCARTHY SR. driving his white

¹ CI#1 is proactively cooperating in hopes of receiving prosecutorial discretion. CI#1 has proven to be credible and reliable and information provided by CI#1 has been corroborated, to the extent possible, through independent investigation, information received independently, and information received separately from other law enforcement agencies. None of the information provided to law enforcement by CI#1 has proven to be either false or misleading.

GMC Pick-up truck to 1311 Willow Avenue, Niagara Falls, NY, entering the residence, and then exiting the residence a short period later. MCCARTHY then entered the white GMC Pick-up and returned to the 1802 Linwood Avenue location and enter the building. CI#1 then entered the building as well before exiting a short period later.

10. At this point law enforcement followed CI#1 back to the pre-arranged meet location where the CI met with Investigator Morse and SA Brostko. CI#1 then explained that they purchased the pistol from DUSTIN inside of the address at 1802 Linwood Avenue for \$700 in ATF Funds. The firearm was contained within a brown paper bag, which contained a box holding the pistol. Law enforcement reviewed the firearm and determined that it was a Taurus Model G2S 9mm pistol bearing Serial Number: ADC157889. The firearm was then transported to the ATF Buffalo Office for processing.

11. A review of **DUSTIN MCCARTHY**'s criminal history reveals that he has prior felony convictions that are punishable by a term of imprisonment of more than one year. On or about December 15, 2004, DUSTIN MCCARTHY SR. pled guilty in Niagara County Court, to violating NYS Penal Law 220.31 Criminal Sale of a Controlled Substance-5th Degree, a Class D, Felony. Additionally, on or about January 10, 2011, DUSTIN MCCARTHY SR. pled guilty to 220.06 Criminal Possession of a controlled substance 5th - with intent to sell, a Class D felony.

12. A review of **DUSTIN MCCARTHY'S** criminal history, as well as a subsequent check with the United States Probation Office, further revealed that **MCCARTHY** is presently on pre-trial supervision with respect to federal narcotics trafficking charges.

13. Based on my training, education, and experience, the previously detailed items seized are indicative of involvement in the trafficking of firearms. Further, based on training and experience, your affiant is aware that traffickers of firearms commonly possess firearms to protect themselves, their products, and the proceeds from their gun sales.

14. Based on your affiant's training and experience, information learned during this investigation, and information received from other law enforcement members, DUSTIN MCCARTHY'S firearms trafficking and related activities have impacted interstate commerce. Specifically, in my training and experience, I know that Taurus does not have firearms manufacturing facilities in New York State, and thus the firearm sold by MCCARTHY has traveled in interstate commerce.

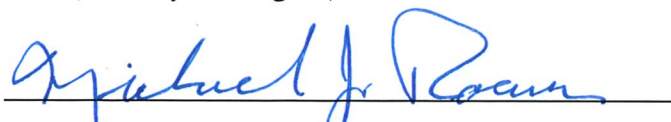
15. Based on the above information, your affiant submits that probable cause exists to believe that **DUSTIN MCCARTHY SR.** violated Title 18, United States Code, Section 933(a)(1) (firearms trafficking), requests that a Criminal Complaint and Arrest Warrant be issued, and that this Complaint and Affidavit be sealed based on a continuing investigation until further Order of this Court.

JONATHAN
ANDRES
(Affiliate)

Digitally signed by
JONATHAN ANDRES
(Affiliate)
Date: 2024.08.13
15:57:54 -04'00'

JONATHAN ANDRES
Task Force Officer
Bureau of Alcohol, Tobacco, Firearms, Explosives

Subscribed and sworn to me telephonically on
this 14th day of August, 2024



HONORABLE MICHAEL J. ROEMER
United States Magistrate Judge